

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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| <b>IN RE: AFTERMARKET FILTERS ANTITRUST<br/>LITIGATION</b>          | <b>Master File No. 1:08-cv-4883</b>   |
| <b>THIS DOCUMENT RELATES TO:<br/>ALL INDIRECT PURCHASER ACTIONS</b> | <b>MDL No. 1957</b>   |
|   | Honorable Robert W. Gettleman<br>Magistrate Geraldine Soat Brown  |
|   | <b>DEFENDANTS' JOINT MOTION<br/>TO DISMISS THE SECOND<br/>AMENDED CONSOLIDATED<br/>INDIRECT PURCHASER<br/>COMPLAINT</b> |

**DEFENDANTS' JOINT MOTION TO DISMISS THE SECOND AMENDED  
CONSOLIDATED INDIRECT PURCHASER COMPLAINT**

Defendants Champion Laboratories, Inc., Honeywell International Inc., Wix Filtration Corp LLC, Affinia Group Inc., Cummins Filtration, Inc., Donaldson Company, Inc., Baldwin Filters, Inc., ArvinMeritor, Inc., Purolator Products NA, LLC and Purolator Products Company LLC (collectively, "defendants") respectfully submit this Joint Motion to Dismiss the Second Amended Consolidated Indirect Purchaser Complaint, pursuant to Fed. R. Civ. P. 12(b)(6). As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. Plaintiffs allege that the defendants, automotive filter manufacturers, engaged in a conspiracy to fix prices for replacement motor vehicle oil, fuel and air filters ("filters") in the U.S. The named plaintiffs are consumers or businesses who are suing on behalf of putative classes of persons or entities who purchased filters *indirectly* from defendants.

2. In its November 5, 2009 Opinion and Order (“Nov. 5 Order”), the Court granted, in part, defendants’ motion to dismiss certain claims in the first Consolidated Indirect Purchaser Complaint, filed on December 1, 2008 (the “2008 Complaint”). The Court directed the indirect purchaser plaintiffs to file an amended complaint conforming to the order by November 30, 2009. The plaintiffs filed their first amended complaint as ordered on November 30 (the “FAC”). Thereafter, on December 17, 2009, the plaintiffs filed a motion for leave to file a second amended complaint (the “SAC”). The Court granted that motion on December 22, 2009, and also granted defendants permission to file a motion to dismiss based on the amended allegations. December 23, 2009 Minute Entry (Dkt. No. 335).

3. The SAC fails to cure several of the deficiencies in the indirect purchasers’ 2008 Complaint that this Court identified in its Nov. 5 Order. First, the SAC still fails to allege facts sufficient to support standing under the consumer protection laws of New York and Rhode Island. Nov. 5 Order at 20-23.

4. Second, plaintiffs have failed to state separate unjust enrichment claims under the laws of certain individual states. Fundamental rules of equity prohibit plaintiffs from asserting “freestanding” unjust enrichment claims under the laws of New York, Rhode Island, New Jersey, Wyoming (prior to 2006) and New Hampshire (prior to 2008) because plaintiffs do not have valid antitrust or consumer protection claims in those states. Plaintiffs cannot try to obtain the same damages in equity that those states expressly preclude at law. Further, as *indirect* purchasers, plaintiffs cannot recover for unjust enrichment in Kansas, Maine, Michigan, New Jersey, New York, North Carolina, Utah, and Wyoming because those states’ laws require plaintiffs to have *directly* conferred a benefit on defendants.

WHEREFORE, defendants respectfully request that the Court dismiss, in their entirety, (1) plaintiffs' claims under the consumer protections laws of New York and Rhode Island; and (2) plaintiffs' unjust enrichment claims under the laws of Kansas, Maine, Michigan, New Jersey, New York, North Carolina, Rhode Island, Utah and Wyoming. Defendants also respectfully request that the Court dismiss plaintiffs' unjust enrichment claim under New Hampshire law for all conduct that occurred prior to 2008.

Dated: January 19, 2010

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Margaret M. Zwisler, hereby certify that on January 19, 2010, I caused the foregoing Defendants' Joint Motion to Dismiss The Second Amended Consolidated Indirect Purchaser Complaint to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties indicated on the electronic filing receipt.

I further certify that I caused true and correct copies of the foregoing to be served via First Class United States Mail, postage pre-paid, upon the individual listed below:

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/s/ Margaret M. Zwisler  
Margaret M. Zwisler